IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6519 OF 2007

Dagdu Sadashiv Pawar ....Petitioner
V/s
The State of Maharashtra & Ors ....Respondents.

Mr.Balasaheb Deshmukh, Adv. For the petitioner.

Mr.Sarang S. Aradhye for respondent Nos. 5 to 10.

CORAM: A.P.DESHPANDE, J.

4/9/07

PC:

The present petitioner was sarpanch of Pandhare wadi. A notice of no confidence was served on Tahsildar by six out of nine members calling upon the Tahsildar to convene a meeting for consideration of no confidence motion. Meeting was held on 17.1.07. The motion of no confidence was carried by requisite majority of six versus three and thus the petitioner came to be unseated. The petitioner filed a dispute under section 35 (3B) of the Bombay Village Panchayat Act before the Collector. The Collector found that the resolution was rightly passed and hence rejected the dispute. Aggrieved thereby the present petitioner carried an appeal before the Commissioner. The Commissioner rejected the appeal and hence the present writ petition is filed. Learned counsel for the petitioner has contended that an application for disqualification under section 14 are filed by some of the residents of gram panchayat against four members of the village panchayat and there is every likelihood of those four members or some of them would stand disqualified. The submission is that the petitioner's dispute ought to have been simultaneously decided along with the applications moved against four members under section 14 of the Bombay Village Panchayat Act. Under section 35(3B) the Collector is obliged to decide a dispute

within a period of seven days from the receipt thereof. Whereas for disposal of an application for disqualification under section 14 the Collector is to decide the said application within a period of 60 days. The said provision is contained in sub-section 2 of section 16 of the act. The subject matter of the dispute raised by the petitioner and the subject matter in dispute in the application moved by some of the residents and the petitioner under section 14 is different. Sub-section 2 of section 16 provides that until the Collector decides the question about disqualification the member shall not be disabled under sub-section 1 from continuing to be a member. In other words, unless and until the Collector declares that a given member has incurred disqualification by passing an order under sub-section 16 the said member shall have a right to attend every meeting and the business transacted in those meetings shall be obviously legal and valid. If this be the position, then even if at later point of time the four members are disqualified as having entered a disqualification by the Collector still same will have no bearing on the passing of the motion of no confidence against the present petitioner. Learned counsel for the petitioner invited my attention to para 62 of the Judgment in the case of ***Javed & Ors.*** V/s ***State of Haryana & Ors.,*** (2003) 8 SCC 369 and submitted that there is no requirement of declaration of disqualification and the disqualification would be attracted from the point of time a person incurs one. The observations made in para 62 are not applicable to the facts of the present case. In the scheme of Bombay Village Panchayat Act a person stands disqualified after the Collector passes an order under sub-section 2 of section 16 and till passing of the said order a person is entitled to the rights of a member. In this view of the matter there is no merit in the writ petition. Same stands summarily dismissed.

4.9.07